



Bruce Washburn

City Attorney

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PHONE 480-312-2405
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MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Clifford J. Frey, Senior Assistant City Attorney *CF*
DATE: March 6, 2014
RE: Item No. 15 – Scottsdale Rotary Foundation Donation and Maintenance Agreement – Supplemental Documents

Your Honor and Members of the City Council,

The attached Scottsdale Rotary Foundation Donation and Maintenance Agreement replaces the original Agreement due to the following errors:

Page 1, #3 – Reference to Exhibit C, should have been Exhibit B

Exhibits A & B – Error in page numbering.

CITY COUNCIL REPORT



Meeting Date: **March 18, 2014**
General Plan Element: ***Community Involvement***
General Plan Goal: ***Seek early and ongoing involvement***

ACTION

Accept the gift of a large, stand-alone Clock from the Rotary Club of Scottsdale.

Adopt Resolution 9681 accepting the donation of a Rotary Clock to be located on the Civic Center Mall.

BACKGROUND

The Rotary Club of Scottsdale was chartered on February 26, 1954. The Rotary Club of Scottsdale has a long standing collaboration with the City of Scottsdale as evidenced by the 1979 donation of Rotary Park which continues to be improved through Rotary efforts. With the motto "Service Above Self" the Rotary Club of Scottsdale wishes to continue to enhance Scottsdale with the donation of a clock to be placed on the Civic Center Mall near City Hall.

ANALYSIS & ASSESSMENT

Recent Staff Action: Staff from Parks and Recreation, Planning, Legal, City Manager's Office, and Facilities Maintenance met with representatives of the Rotary Club of Scottsdale to discuss and participate in the crafting of the donation and maintenance agreement. Staff is confident that construction and maintenance concerns were properly addressed.

RESOURCE IMPACTS

Staffing, Workload Impact: The Rotary Club of Scottsdale is responsible for all permitting and installation; this has no effect on staff workload.

Maintenance Requirements: The Rotary Clock has a limited warranty and the City of Scottsdale assumes maintenance of the clock as part of the agreement.

Future Budget Implications: There may be some future maintenance cost that the city is responsible for, but the amount is undetermined and expected to be nominal.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Accept the gift of the clock from the Rotary Club of Scottsdale.

Proposed Next Steps: The Rotary Club of Scottsdale wishes to install the clock as soon as possible to commemorate the 60th anniversary of their charter.

STAFF CONTACTS (S)

Rachel Smetana, Management Assistant to the Mayor, rsmetana@scottsdaleaz.gov

APPROVED BY


J.P. Twist, Mayor's Chief of Staff

480-312-7806, jptwist@scottsdaleaz.gov

3-4-14
Date


Fritz Behring, City Manager

480-312-2800, fbehring@scottsdaleaz.gov

3-4-14
Date

ATTACHMENTS

1. Resolution 9681
2. Scottsdale Agreement No. 2014-034-COS

RESOLUTION NO. 9681

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE DONATION AND MAINTENANCE AGREEMENT NO. 2014-034-COS BETWEEN THE CITY AND SCOTTSDALE ROTARY FOUNDATION FOR THE DONATION AND MAINTENANCE OF A LARGE, STAND-ALONE CLOCK TO THE CITY OF SCOTTSDALE TO BE LOCATED ON THE CIVIC CENTER MALL.

The Scottsdale Rotary Foundation desires to donate a large, stand-alone Clock to the City of Scottsdale to be located on the Civic Center Mall; and

The City is prepared to accept the donation of the Clock and the responsibility for all necessary maintenance; and

The City Council has considered the City expenditure authorized by this Agreement and the direct consideration that the City will receive and finds that there is a clearly identified public purpose for the City's expenditure and that the City will receive direct consideration substantially equal to its expenditure.

BE IT RESOLVED by the City Council of the City of Scottsdale as follows:

Section 1. The Mayor of the City of Scottsdale is hereby authorized and directed to execute Donation and Maintenance Agreement No. 2014-034-COS between the City and Scottsdale Rotary Foundation for the donation and maintenance of a large, stand-alone clock to the City of Scottsdale to be located on the Civic Center Mall.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 18th day of March, 2014.

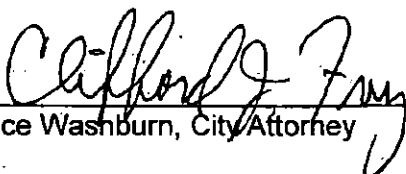
ATTEST:

CITY OF SCOTTSDALE
An Arizona municipal corporation

Carolyn Jagger, City Clerk

W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:



Bruce Washburn, City Attorney

By: Clifford J. Frey
Senior Assistant City Attorney

**SCOTTSDALE ROTARY FOUNDATION
DONATION AND MAINTENANCE AGREEMENT**

THIS AGREEMENT, entered into this ____ day of March, 2014, between the City of Scottsdale, (the "City") an Arizona municipal corporation, and the Scottsdale Rotary Foundation, (the "Foundation") an Arizona non-profit corporation, collectively, the "Parties."

The Scottsdale Rotary Foundation desires to donate a large, stand-alone Clock to the City of Scottsdale to be located on the Civic Center Mall; and

The City is prepared to accept the donation of the Clock and the responsibility for all necessary maintenance; and

The City Council has considered the City expenditure authorized by this Agreement and the direct consideration that the City will receive and finds that there is a clearly identified public purpose for the City's expenditure and that the City will receive direct consideration substantially equal to its expenditure.

IN CONSIDERATION of the mutual covenants, conditions and agreements contained in this Agreement, it is agreed as follows:

1. *Acceptance of Donation.* Upon receipt of written assurances from the Foundation that it has funds sufficient to purchase the Clock and desires to donate the Clock to the City and confirmation that the Clock substantially conforms to the description contained in Exhibit A attached, this Donation Agreement will be submitted to the City Council for approval. The Foundation will have no obligation to order the Clock until such time as the City Council has approved this Agreement.

2. *Donation of Clock.* By signing this Agreement, the Foundation agrees to use best efforts to donate, contingent upon approval by both the Foundation's Board of Directors and the City Council, to the City a Clock, as is more particularly described in Exhibit A attached and by reference made a part hereof. Approval of this Agreement by the City Council will constitute acceptance of the donation of the Clock by the City upon completion of proper installation and final acceptance of the work by the City. Risk of loss will remain with the Foundation until final acceptance of the work by the City, which will be promptly evidenced in writing by the Parks, Recreation, and Human Services Director.

3. *Location of Clock.* The Clock will be placed in the City's Civic Center Mall at the location depicted on the site plan, attached as Exhibit B and by reference made a part hereof.

4. *Installation.* Within 180 days after the date of approval of this Agreement, the Foundation will install a Clock that substantially conforms to the description contained in Exhibit A attached. The Foundation is responsible for the installation of the Clock at the agreed location. The Parties will agree upon a mutually acceptable schedule for installation of the Clock. The Clock will be installed by properly licensed and bonded contractors in accordance with the plans and specifications provided by the manufacturer and approved by the City. The Foundation is responsible for the payment of any and all costs of installation, including without limitation, all costs for the extension of electrical service, for the concrete pedestal and for all necessary permitting. Any landscaping or turf that needs to be restored or replaced as a part of the installation will be the responsibility of the City.

5. *Maintenance of the Clock.* Upon completion of the installation of the Clock, the Foundation will assign to the City any applicable warranties. Throughout the term of this Agreement, the City will be solely responsible for any and all maintenance necessary to keep the Clock properly operating, clean, attractive in appearance, and free of graffiti. The City will be responsible for the continuing landscape maintenance of the planter in which the Clock is installed.

6. *Utilities and Insurance.* The City will be responsible for paying for all electrical utility service necessary to operate the Clock, and provide insurance in the same manner and to the same extent as is provided for other City property of a similar nature.

7. *Foundation Name Plate:* The Foundation may install, at its sole cost and expense, a donation plate on the Clock recognizing those who have made donations toward the purchase and installation of the Clock. The donation plate will be keeping with the style of the Clock, and will be tastefully rendered to the mutual satisfaction of the Foundation and the Parks, Recreation and Human Services Director.

8. *Relocation of Clock.* If circumstances require that the Clock be relocated, the City will notify the Foundation in writing of the need to relocate the Clock and the City and the Foundation will consult, in good faith, to find a new location that is mutually acceptable. If a mutually acceptable location cannot be found, the City agrees that the Foundation may remove the Clock, at Foundation's sole cost and expense, to a location not on City Property. In this event, the City will reconvey the Clock to the Foundation in its then condition. The Foundation will restore the site from which the Clock is taken to its original condition, reasonable wear and tear excepted. The Foundation hereby waives and releases the City from any and all costs, expenses or liability related to the condition of the Clock at the time of reconveyance to the Foundation. In the event that the Foundation does not wish to take possession of the Clock, the City has the right, in its sole and exclusive discretion, to determine the new location for the installation of the Clock. The City will pay any and all costs and expenses of moving and reinstalling the Clock at the new location.

9. *Miscellaneous.*

9.1 *Limited Severability.* In the event any term, condition, covenant, stipulation, agreement or provision herein contained is held to be invalid or unenforceable for any reason, the invalidity of any such term, condition, covenant, stipulation, agreement or provision shall in no way affect any other term, condition, covenant, stipulation, agreement or provision herein contained. Further, this Agreement shall be deemed automatically reformed to secure to the City the legal, equitable, practical and other benefits of the written provisions of this Agreement to the very maximum extent permitted by law.

9.2 *Conflicts of Interest.* No member, official or employee of the Foundation shall have any direct or indirect interest in this Agreement; nor participate in any decision relating to the Agreement that is prohibited by law.

9.3 *No Partnership.* This Agreement and the transactions and performances contemplated herein shall not create any sort of partnership, joint venture or similar relationship between the Parties.

9.4 *Nonliability of City Officials and Employees and Foundation.* No member, official, representative or employee of the City shall be personally liable to any party or to any successor in

interest to any party, in the event of any default or breach by the City or for any amount which may become due to any party or successor, or with respect to any obligation of the City or otherwise under the terms of this Agreement or related to this Agreement. No member, official, representative or employee of the Foundation shall be personally liable to any party or to any successor in interest to any party, in the event of any default or breach by the Foundation or for any amount which may become due to any party or successor, or with respect to any obligation of the Foundation or otherwise under the terms of this Agreement or related to this Agreement.

9.5 *Notices.* Notices shall be given in writing, personally served upon the other party or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed to:

If to City: City of Scottsdale
 ATTN: Janice Cameron
 Parks, Recreation and Human Services Director
 7447 E. Indian School Road, #300
 Scottsdale, Arizona 85251

If to Foundation: Scottsdale Rotary Foundation
 ATTN: Kari Baker, President
 P.O. Box 5633
 Scottsdale, Arizona 85261

or to such other street address within Maricopa County, Arizona as may be designated by the Parties in writing from time to time. Notices to the Foundation may be hand delivered. In the event of any service by mail, as aforesaid, service of any notice shall be deemed to be complete forty-eight (48) hours after the notice is deposited in the United States mail.

9.6 *Time of Essence.* Time is of the essence of each and every provision of this Agreement. Any payments due on Saturday, Sunday or an Arizona legal holiday shall be due on the next succeeding day that is not a Saturday, Sunday or an Arizona legal holiday.

9.7 *Invalid Provisions.* In the event any term, condition, covenant, stipulation, agreement or provision herein contained is held to be invalid or unenforceable for any reason, the invalidity of any such term, condition, covenant, stipulation, agreement or provision shall in no way affect any other term, condition, covenant, stipulation, agreement or provision herein contained.

9.8 *Paragraph Headings.* The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

9.9 *Attorneys' Fees.* In the event any action or suit or proceeding is brought by either Party to collect any Fees due or to become due hereunder or any portion hereof or to enforce compliance with this Agreement or for failure to observe any of the covenants of this Agreement or to vindicate or exercise any of such Party's rights or remedies hereunder, the other Party agrees to pay the nonperforming Party all costs of such action or suit and all expenses of such action or suit together with such sum as the Court may adjudge reasonable as attorneys' fees to be allowed in said suit, action or proceeding.

9.10 *No Third Party Beneficiaries.* No person or entity shall be a third party beneficiary to this Agreement.

9.11 *Exhibits.* All Exhibits specifically stated to be attached hereto are incorporated into this Agreement by this reference.

9.12 *Integration.* This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matter of this Agreement.

9.13 *Further Assurances.* Each Party agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as the other Party may reasonably require to consummate, evidence, confirm or carry out the agreement contained herein.

9.14 *Construction.* Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement shall be construed according to its plain meaning and neither for nor against either Party hereto.

9.15 *Choice of Law.* This Agreement shall be governed by the laws of the State of Arizona. Proper venue for any action regarding this Agreement shall be Maricopa County.

9.16 *Amendments.* All amendments, modifications, revisions or additions to this Agreement must be in writing and signed by the Parties.

9.17 *Approvals and Inspections.* All approvals, reviews and inspections by the City under this Agreement or otherwise are for the City's sole benefit and not for the Foundation's benefit.

9.18 *Authority.* The Parties represent and warrant to one another that the undersigned have full power and authority to enter into this Agreement on behalf of the entity for which each has signed and that all necessary actions have been taken to give full force and effect to this Agreement.

9.19 *Statutory Cancellation Right.* In addition to its other rights hereunder, the City shall have the cancellation rights specified in A.R.S. § 38-511.

(Signatures on next page.)

EXECUTED as of the date first given above.

Scottsdale Rotary Foundation,
an Arizona Nonprofit Corporation

By: Kari Baker
Kari Baker, President

City of Scottsdale,
an Arizona municipal corporation

By: _____
W.J. "Jim" Lane, Mayor

ATTEST:

Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

Clifford J. Frey
Bruce Washburn, City Attorney
By: Clifford J. Frey
Senior Assistant City Attorney

EXHIBIT "A"

Cast aluminum post, minimum 3/8" thick wall with removable door. Cast aluminum top head assembly, saddle, spike and ornamental top. Clock to be an authentic reduced size version, historical reproduction of the Howard four dial post clock. Total height: 10'-9". No fiberglass to be used. This clock is UL listed.

All exterior parts of the clock to have an exterior grade, matte black polyurethane painted finish. Gold painted highlighting to accent the casting detail at no additional charge. Cast aluminum header plaques with a matte black polyurethane painted finish and gold painted highlighting to have raised aluminum lettering, highlighted in gold, to read "Scottsdale Rotary".

Black dial markings Style "A" and clock hands Style "MS-A". Hands to be made of aluminum with non-corrosive bronze bushings. Rotary International "Wheel" logo on all four clock faces in black and white.

Features also include: Style H-MI clock movement. All bearing surfaces to be made of self-lubricating materials, as periodic lubrication will then not be required. All parts to be made of non-corrosive metals such as brass and stainless steel.

Translucent milky-white cast acrylic dials, backlit with LED's. Illumination to be controlled by a photoelectric cell.

Flat, clear tempered glass crystals provided for the protection of the clock faces and hands.

Type CTRL-99BMI, Automatic Clock Controller with IP65 enclosure – Indoor & Outdoor Use. Automatically resets clock after power failures. **Daylight Savings Time feature disabled.** Precision Quartz Time base 4 minutes per year maximum drift. Optional GPS – no drift. Built in 100 year daylight savings time calendar. 2 Line 16 character back lighted LCD display. ETL listed to UL 863. Power Failure Event logging. Standard MI output – 4 clocks maximum standard. Standard 24VDC RP output – 20 clocks maximum. Sweep Second hand output. Hour Strike Capability. RS-232 and RS-485 output ports. 24 VAC hour strike output – configurable pulse output. Mounted in clock base by Manufacturer.

GPS Satellite Receiver to enable clock to synchronize with National Bureau Standard Atomic Clock. This will provide time accurate to 1 microsecond 1×10^{-6} . To be mounted on top of clock head by Manufacturer.

Stainless steel anchor rods, full size templates and foundation detail drawings.

The electrical requirement is a single 15 amp dedicated circuit. A 3-wire lead at the foundation, (line, neutral, and ground). The current load for the LED version is 120V, 60 Hz, 0.75 Amps (approximately 90 watts).

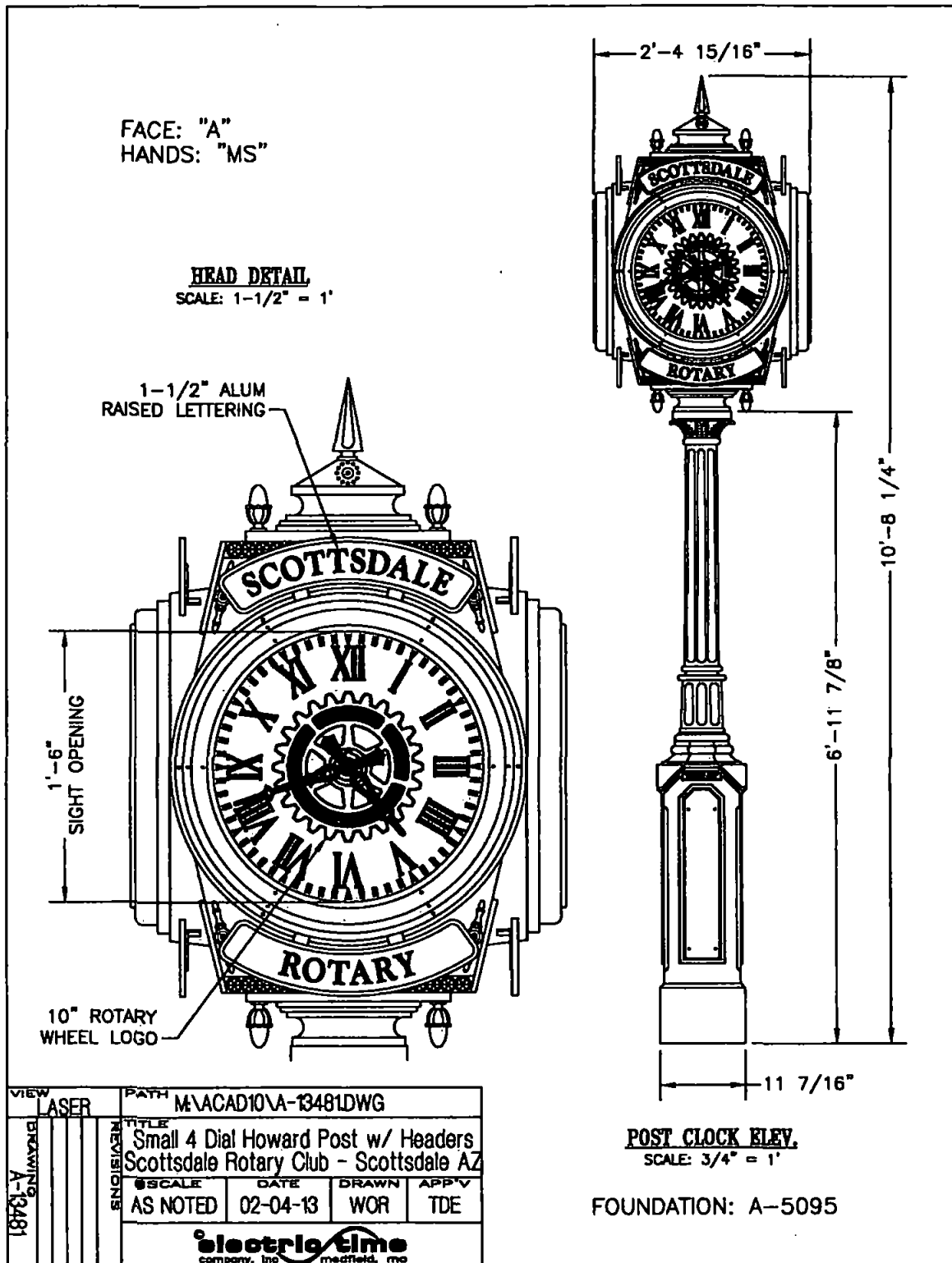


EXHIBIT B

